D. Authority

108. Authority for issuance of this *Report and Order* and *Further Notice of Proposed Rule Making* is contained in the Communications Act, Sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332, 47 U.S.C. §§ 154(i), 157, 303(c), 303(f), 303(g), 303(r), 332, as amended.

E. Ordering Clauses

109. Accordingly, IT IS ORDERED that Part 15 of the Commission's rules is amended as set forth in Appendix B and will become effective 60 days after publication in the Federal Register.

110. IT IS FURTHER ORDERED that Part 22 of the Commission's rules is amended as set forth in Appendix B and will become effective 60 days after publication in the Federal Register.

111. IT IS FURTHER ORDERED that Part 24 of the Commission's rules is amended as set forth in Appendix B.

112. IT IS FURTHER ORDERED that the cost-sharing plan is conditioned on approval by the Wireless Telecommunications Bureau of an entity (or entities) to administer the plan, as described in Section IV(B)(3), *supra*.

113. IT IS FURTHER ORDERED that Part 24 rule changes will become effective on the date that the Wireless Telecommunications Bureau selects a clearinghouse to administer the cost-sharing plan.

114. IT IS FURTHER ORDERED that Part 94 (new Part 101, effective August 1, 1996) of the Commission's rules is amended as set forth in Appendix B and will become effective 60 days after publication in the Federal Register.

115. IT IS FURTHER ORDERED that rules requiring Paperwork Reduction Act approval shall become effective upon approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13;

116. IT IS FURTHER ORDERED THAT, as of the effective date of the new rules, the Commission will only grant primary status to applications for minor modifications that would not add to the relocation costs of PCS licensees, as described in Section IV(C) *supra*.

117. IT IS FURTHER ORDERED THAT, as of the effective date of the new rules, the Commission will grant applications for major modifications and extensions to existing 2 GHz microwave systems only on a secondary basis, as described in Section IV(C) *supra*.

118. IT IS FURTHER ORDERED that the Regulatory Flexibility Analysis, as

required by Section 604 of the Regulatory Flexibility Act, and as set forth in Section VII(A) is ADOPTED.

119. IT IS FURTHER ORDERED that the Secretary shall send a copy of this *First Report and Order* and *Further Notice of Proposed Rule Making* to the Chief Counsel for Advocacy of the Small Business Administration.

F. Further Information

120. For further information concerning this proceeding, contact Linda Kinney, Legal Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418-0620.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

MECHANICS OF THE COST-SHARING PLAN

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A. Reimbursement Rights

1. Pro Rata Reimbursement Under the Cost-Sharing Formula

1. Background. Under the plan proposed in our *Cost-Sharing Notice*, PCS licensees would be entitled to reimbursement based on a cost-sharing formula.[269] The formula is derived by amortizing the cost of relocating a particular microwave link over a ten-year period, to reflect the total number of PCS licensees that benefit from the microwave relocation and the relative time of market entry.[270] The proposed formula takes into consideration the amount paid to relocate the link, the number of PCS licensees that would have posed an interference problem to the link, and the number of months that have passed since the relocator obtained its reimbursement rights.[271]

2. Comments. The overwhelming majority of the commenters support adoption of the proposed formula, although some commenters suggest minor modifications. BellSouth suggests combining two factors into one, as discussed in more detail below, which will render

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[269] *Cost-Sharing Notice*, 11 FCC Rcd at 1935-1937, ¶¶ 25-31.

[270] *Id.* at 1935-1937, ¶ 25-31.

[271] *Id.*

the same result but simplify the calculation.[272] Only a few commenters expressed opposition to our proposal. UTC states that mandating the use of the proposed formula would be inflexible and inequitable, because it will be difficult to apply in certain situations.[273] For example, UTC states that some parties are negotiating compensation packages that include non-cash items, such as participation in a joint-venture, that do not fit easily into the formula.[274] Also, UTC contends that some parties are negotiating relocation agreements for multi-link systems that do not designate a per-path amount.[275] Thus, UTC suggests that the proposed cost-sharing formula should be used as a guideline for determining compensation, but its use should not be mandated.[276]

3. Discussion. Because the formula we proposed in the *Cost-Sharing Notice* received widespread support from commenters, we adopt the proposed formula along with a few minor modifications. We believe that the formula provides an effective and straightforward means of determining a subsequent PCS licensee's reimbursement obligation. This formula is essential to make cost-sharing administratively feasible, particularly in light of the number of links that will require relocation and the number of PCS licensees potentially involved. We also believe that the formula strikes an appropriate balance between equitable allocation of relocation costs and ease of administration. The new formula is:

$$R_N = \frac{C}{N} \times \frac{[120 - (T_m)]}{120}$$

- R_N equals the amount of reimbursement.
- C equals the actual cost of relocating the link (up to the reimbursement cap).
- N equals the number of PCS licensees that would have interfered with the link. For the PCS relocator, N = 1. For the next PCS licensee that would have interfered with the link, N = 2, and so on.
- T_m equals the number of months that have elapsed between the month the PCS relocator obtains reimbursement rights and the month that the clearinghouse notifies a later-entrant of its reimbursement obligation.

4. This formula is derived by amortizing the cost of relocating a particular microwave

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[272] BellSouth Comments at 4.

[273] UTC Comments at iv; 8-9.

[274] *Id.*

[275] *Id.*

[276] *Id.*

link over a 10-year period, which is represented by the value 120.[277] As suggested by BellSouth, we have eliminated the T_1 variable proposed in the *Cost-Sharing Notice*, which represented the month that the first PCS licensee obtained reimbursement rights, and the T_n variable, which represented T_1 plus the number of months that have passed since the PCS relocator obtained its reimbursement rights.[278] Instead of the $T_n - T_1$ calculation, we substitute a T_m variable, which represents the number of months that have passed since the PCS relocator obtained its reimbursement rights.[279] We agree with BellSouth that combining two variables into one renders the same result but simplifies the calculation.[280]

5. The following is an example of how the formula will work: In January 1996, PCS Licensee A pays $210,000 to relocate microwave Link X and obtain reimbursement rights. Thus, C = $210,000, which is the amount paid to relocate the link.[281] In January 1997, PCS Licensee B files a copy of its PCN with the clearinghouse for a system that would have caused interference to Link X.[282] As a result, $T_m = 12$, because twelve months have elapsed between the month the PCS relocator obtained reimbursement rights and the month that a later-entrant's reimbursement obligation attaches. Because Licensee B is the second PCS provider to commence operations that benefit from the relocation of Link X, N = 2. The calculation of Licensee B's reimbursement payment is as follows:

$$R_2 = \frac{210{,}000}{2} \times \frac{[120 - 12]}{120} = \$\ 94{,}500$$

Thus, Licensee B pays $94,500 to Licensee A, while Licensee A remains unreimbursed for $115,500 of its original cost. The $21,000 difference is due to the depreciation factor in the formula, and reflects the fact that Licensee A benefited from the relocation of Link X a year before Licensee B.

6. In January 1998, Licensee C files a copy of its PCN with the clearinghouse for a system that would have caused interference to Link X. Twenty-four months have elapsed since the PCS relocator obtained its reimbursement rights, so $T_m = 24$. Because Licensee C is

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[277] Twelve (12) months per year multiplied by ten (10) years equals 120.

[278] *Cost-Sharing Notice*, 11 FCC Rcd at 1930, ¶ 13.

[279] The PCS relocator obtains reimbursement rights on the date that the relocation agreement between the microwave incumbent and the PCS relocator is signed, as discussed in Appendix Section A(2), *infra*.

[280] BellSouth Comments at 4.

[281] This example assumes that Licensee A did not pay any relocation premium, so that the full $210,000 reflects actual relocation costs. Compensable costs are discussed in Appendix Section A(4), *infra*.

[282] This determination is based on the Proximity Threshold test, which is discussed in detail in Appendix Section B(1), *infra*.

the third licensee to benefit from the relocation of Link X, N now increases to 3. Licensee C pays $56,000 under the formula as follows:

$$R_3 = \frac{210{,}000}{3} \times \frac{[120 - 24]}{120} = \$\ 56{,}000$$

The $56,000 payment is divided equally between Licensees A and B. Thus, the net payment by Licensee A is now reduced by $28,000 to $87,500 and the net payment by Licensee B is similarly reduced to $66,500. Licensee C's share is lower than either because of the additional year of depreciation that has occurred before Licensee C entered the market. The formula can be applied in the same manner to subsequent PCS licensees that interfere with Link X.

7. All calculations must be done on a per-link basis. Therefore, if PCS relocators agree to move a multi-link system, they must do an accounting for each individual link if they want to collect reimbursement under our cost-sharing plan.[283] We believe that calculating reimbursement on a per-link basis is the most equitable way to distribute reimbursement obligations, and that the benefits outweigh the difficulties UTC believes parties will experience in allocating certain costs to certain links.[284] Furthermore, as we proposed in the *Cost-Sharing Notice*, PCS licensees remain free to negotiate alternative cost-sharing terms or agreements.[285] Therefore, if PCS relocators enter into unique relocation agreements that cannot be easily converted into monetary terms, they may choose to negotiate an alternative cost-sharing agreement with subsequent PCS licensees. We believe that such flexibility addresses UTC's concerns about rigid application of the formula.[286]

2. Depreciation

8. Background. Because the formula is derived by amortizing the cost of relocating a link over a ten-year period, the amount that the PCS relocator receives in reimbursement "depreciates" over time. In the *Cost-Sharing Notice*, we proposed that the date from which the reimbursement amount begins to depreciate should be the date that the PCS relocator receives its reimbursement rights.[287] Reimbursement rights would be created on the date that a relocation agreement is signed. We also sought comment on whether depreciation should start on a uniform date for all licensees, such as the date the voluntary negotiation period

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[283] Those expenses that qualify as compensable are discussed in further detail in Appendix Section A(4), *infra*.

[284] UTC Comments at 8-9.

[285] *See Cost-Sharing Notice*, 11 FCC Rcd at 1936, ¶ 29; *see also* Section IV(B)(1), *supra*.

[286] UTC Comments at 8-9.

[287] *Cost-Sharing Notice*, 11 FCC Rcd at 1937, ¶¶ 30-31.

began for the A and B block licensees.[288]

9. Comments. Many commenters agree with our proposal that depreciation should start on the date that the PCS relocator obtains reimbursement rights, which should be the date that a relocation agreement is signed.[289] BellSouth, however, recommends that reimbursement rights be acquired on the day that the microwave incumbent ceases operations, because reliance on a contract execution date would overlook the practicality of a phased-in approach to relocation.[290] Other PCS licensees argue that depreciation should begin on the date that a PCS licensee places its systems in operation, rather than the date it obtains reimbursement obligations via the clearinghouse, because many months may pass between the time a PCS licensee registers with the clearinghouse and the date when service is actually offered.[291] Furthermore, AT&T argues that depreciation begins for the initial PCS relocator when it acquires reimbursement rights from the clearinghouse, but that the depreciation clock stops for later-entrant PCS licensees when they place their facilities into operation, and that this disparity should be eliminated.[292] Several commenters contend that the date a licensee commences operations may be difficult to ascertain, and that requiring confirmation of such date may add to the administrative burden of the clearinghouse.[293] PacBell suggests that cost-sharing rights and obligations should go into effect 60 days after the clearinghouse assigns reimbursement obligations to the PCS licensee, because such a date is easy to confirm.[294] On the other hand, a few small businesses that anticipate bidding for future PCS licenses support a uniform, early date from which depreciation would be calculated, rather than the variable one suggested.[295] These commenters argue that the depreciation start date should be an early date to ensure that later entrants, such as designated entities, pay lower relocation costs due to

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[288] *Id.*

[289] *See, e.g.*, PacBell Reply Comments at 6-7; SBMS Reply Comments at 8-9; Western Reply Comments at 9. Note that our cost-sharing proposal advocated the use of the term "reimbursement rights" for cost-sharing purposes, rather than "interference rights," which is a change from PacBell's original proposal. *See Cost-Sharing Notice*, 11 FCC Rcd at 1932, ¶ 18.

[290] Bell South Comments at 11.

[291] *See, e.g.*, AT&T Comments at 9-10.

[292] *Id.*

[293] PacBell Reply Comments at 6-7; *see also* SBMS Reply Comments at 8-9; Western Reply Comments at 9.

[294] PacBell Comments at 2-3. *See also* SBMS Reply Comments at 8-9; BellSouth Reply Comments at 8-9.

[295] *See, e.g.*, GO Comments at 2-3; US Airwaves Comments at 3.

their limited financial assets.[296]

10. Discussion. We agree with those commenters that suggest that tying depreciation to the acquisition of reimbursement rights is administratively simple and easy to confirm.[297] Therefore, depreciation shall begin on the date that the PCS relocator signs a relocation agreement with a microwave incumbent. Within ten business days of the date the agreement is signed, the PCS licensee shall submit documentation of the agreement to the clearinghouse. If the clearinghouse has not yet been selected, the PCS relocator will be responsible for submitting documentation of a relocation agreement within ten business days of the date that the Wireless Bureau issues a public notice announcing that the clearinghouse has been established and has begun operation.[298]

11. We disagree with those commenters who argue that depreciation should begin when the PCS relocator begins operations.[299] As we stated in the *Cost-Sharing Notice*, we are concerned that, in some instances, a PCS relocator might place its system in operation after a subsequent licensee has started service, as a result of delays in construction, inadequate equipment supplies, technical difficulties, etc.[300] Such a scenario would make the cost-sharing formula difficult to administer, because the T_m variable would become a negative number. Furthermore, starting depreciation on the date that the PCS relocator signs a relocation agreement will mean that the PCS relocator will always pay the largest portion of relocation costs associated with the link. We believe that PCS relocators will therefore have an additional incentive to negotiate the lowest possible relocation costs.[301] We also agree with those commenters who point out that the date a relocation agreement is signed is easier to identify than the date that the PCS relocator actually begins service.[302]

12. Finally, we are not persuaded by those commenters who argue that a uniform, early start date, such as the date that the voluntary negotiation period began for A and B block licensees, is preferable.[303] Although a uniform date may be the simplest alternative

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[296] *See* GO Comments at 2-3; *see also* DCR Comments at 3. Another small business, Western, supports a uniform date for depreciation for reasons of uniformity and simplicity. *See* Western Comments at 3.

[297] *See, e.g.*,Pacific Bell Comments at 2-3, SBMS Reply Comments at 8-9; Bell South Reply Comments at 8-9.

[298] *See* discussion in Section IV(B)(1), *supra.*

[299] *See, e.g.*, AT&T Comments at 9-10; SBMS Reply Comments at 8-9.

[300] *Cost-Sharing Notice*, 11 FCC Rcd at 1937, ¶ 30.

[301] *Id.* at 1937, ¶ 31.

[302] *See, e.g.*, GO Comments at 3

[303] *See, e.g.*, GO Comments at 2-3; *see also* DCR Comments at 3; Western Comments at 3.

from an administrative perspective, we believe that it will distort the amount of reimbursement that PCS licensees would be entitled to receive. For example, if a PCS licensee decides not to relocate a microwave system in a rural part of its market area until five years after it receives its license, then it would be entitled to only a portion of the reimbursement it would be entitled to if depreciation begins on the date that the relocation agreement is signed. In sum, we believe that starting depreciation on the date that parties sign the relocation agreement for a particular link balances the interests of both current and future PCS licensees.

3. Full Reimbursement

13. Background. In the *Cost-Sharing Notice*, we tentatively concluded that, under some scenarios, PCS relocators should be entitled to full reimbursement of compensable costs, up to the cap, for relocating links that do not pose an interference problem to their own systems and which benefit other PCS licensees.[304] Links can be non-interfering in the following two ways: (1) the link is fully outside of the PCS relocator's geographic market area, or (2) the link is fully outside of its licensed frequency band. We tentatively concluded that a PCS relocator should be entitled to full reimbursement, subject to the reimbursement cap, for relocating links with both endpoints outside of its licensed service area.[305] We expressed concern, however, about allowing full reimbursement for all links that are fully outside a PCS relocator's frequency band, because such links might pose an adjacent-channel interference problem to the PCS relocator, and therefore would not be truly non-interfering.[306]

14. Comments. Most commenters agree that PCS relocators should be entitled to full reimbursement for relocation of links outside of their geographic market area.[307] However, several commenters propose the following modification: in a situation where a link is located fully within the relocator's channel block, but with an endpoint in each of two geographic markets, one of the PCS licensees should relocate the link and then split the cost equally with the other PCS licensee.[308] With respect to links fully outside of the PCS relocator's licensed frequency band, a majority of commenters argue that full reimbursement is appropriate

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[304] *Cost-Sharing Notice*, 11 FCC Rcd at 1938, ¶ 33. Full reimbursement is different from reimbursement pursuant to the cost-sharing formula, because all of the PCS relocator's reimbursable costs are paid, instead of just a *pro rata* portion.

[305] *Id.*

[306] *Id.*

[307] *See, e.g.*, UTAM Comments at 9; Western Comments at 4; Omnipoint Comments at 4; Southern Comments at 6-7.

[308] *See, e.g.*, API Comments at 9-10; PCIA Comments at 33; BellSouth Comments at 8.

whether or not the link is truly non-interfering.[309] They assert that determining whether the link posed an adjacent channel interference problem may be difficult and would unduly complicate the cost-sharing plan.[310]

15. Additionally, several commenters suggest that, when a PCS provider relocates a link wholly outside its service area and/or spectrum block, it should be entitled to 100 percent reimbursement, up to the cap, but such costs should not be subject to depreciation, as proposed in the *Cost-Sharing Notice*.[311] These commenters argue that this policy is advisable because applying depreciation to this situation might encourage PCS providers to delay their required relocations in the hope that other PCS entities in their block will relocate links before them, because the longer they delay the relocations, the higher the amount of reimbursement.[312]

16. Discussion. We agree with the majority of commenters that PCS relocators should be entitled to full reimbursement of compensable costs, up to the cap, for relocating non-interfering links that are either fully outside their market area or their licensed frequency band.[313] Even though a PCS licensee might be relocating a link because it poses an adjacent channel interference problem, we agree with commenters that trying to determine whether the link is truly non-interfering would be administratively burdensome.[314] For administrative convenience, therefore, we will allow full reimbursement of compensable costs, up to the cap, if the PCS relocator relocates a link that is fully outside its licensed frequency band. In addition, we do not agree with commenters that, in situations in which a PCS licensee relocates a microwave link with only one endpoint in its market on its frequencies, the relocation costs for both ends of the link should be aggregated and then split between the relocator and the co-channel adjacent market PCS licensee.[315] We believe that this suggestion would unduly complicate the cost-sharing plan. Reimbursement, therefore, works as follows (changes from our original proposal are shaded):

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[309] *See, e.g.*, Southern Comments at 6-7; UTC Comments at 7; Omnipoint Comments at 4.

[310] *Id.*

[311] PCIA Comments at 30-34.

[312] *See, e.g.*, PCIA Comments at 33, BellSouth Reply Comments at 9; PacBell Reply Comments at 4.

[313] *See, e.g.*, UTAM Comments at 9; Western Comments at 4; Omnipoint Comments at 4.

[314] *See, e.g.*, Omnipoint Comments at 4; PCIA Comments at 33.

[315] *See, e.g.*, API Comments at 9-10; BellSouth Comments at 8.

	Fully Within Relocator's Block	Partly Within Relocator's Block	Outside of Relocator's Block
Both endpoints inside Relocator's MTA/BTA	No reimbursement	*Pro rata* reimbursement under the cost sharing formula	**100 percent reimbursement (up to the cap)**
One endpoint inside Relocator's MTA/BTA	*Pro rata* reimbursement under the cost sharing formula	*Pro rata* reimbursement under the cost sharing formula	**100 percent reimbursement (up to the cap)**
No endpoints inside Relocator's MTA/BTA	100 percent reimbursement (up to the cap)	100 percent reimbursement (up to the cap)	100 percent reimbursement (up to the cap)

17. In addition, we also agree with PCIA that when a PCS provider relocates a link wholly outside its service area and/or spectrum block -- which would entitle it to full reimbursement of compensable costs up to the cap -- that such reimbursement should not be depreciated under the cost-sharing plan.[316] We believe that this addition to our original proposal will encourage PCS licensees not to delay relocations in the hope that other PCS entities will relocate these links.

4. Compensable Costs

18. Background. Relocation costs fall into roughly two categories: (1) the actual cost of relocating a microwave incumbent to replacement facilities, and (2) payments above the cost of providing comparable facilities, also referred to as "premium payments."[317] We proposed in the *Cost-Sharing Notice* that premium payments should not be reimbursable, because such payments are likely to be paid by PCS licensees to accelerate relocation so that the PCS relocator can be first to market.[318] Therefore, we tentatively concluded that only actual relocation costs should be compensable.[319]

19. Comments. Many PCS licensees agree with our tentative conclusion that

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[316] PCIA Comments at 33.

[317] *Cost-Sharing Notice*, 11 FCC Rcd at 1932, ¶ 18.

[318] *Id.*

[319] *Id.*

premium payments should be excluded from reimbursement under the cost-sharing plan.[320] Furthermore, commenters generally approve of the list of compensable costs proposed in the *Cost-Sharing Notice*, which are discussed in more detail below.[321] However, microwave incumbents suggest that such a list be illustrative, not exhaustive, due to their concern that legitimate expenses incurred to date will not be included in such calculations and that limitations on reimbursement will ultimately affect them.[322] They also argue that attorney and consultant fees are a necessary part of a seamless and smooth microwave relocation, and that such costs should qualify as reimbursable.[323] CIPCO states that reasonable legal costs should be eligible for reimbursement, but capped at $5,000 per link.[324] AT&T believes that PCS relocators should be eligible for cost-sharing with respect to any payments made to or on behalf of a microwave incumbent, subject to the reimbursement cap, without regard to the "reasonableness" of such payment.[325]

20. Discussion. We adopt our proposal that premium payments should not be reimbursable, because such payments are likely to be paid by PCS licensees to accelerate relocation in order to be the first licensee in the market area to offer PCS services. We agree with commenters that later market entrants should not be required to contribute to premium payments, because they will not receive the corresponding advantage of being first to market.[326] Therefore, we limit reimbursable costs to actual relocation costs. Because our proposed list of compensable costs received broad record support, we conclude that the PCS relocator may seek reimbursement for items such as: radio terminal equipment (TX and/or RX - antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; prior coordination notification under Section 21.100(d) of the Commission's rules; site lease renegotiation; required antenna upgrades for interference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; and leased facilities. We also agree with those commenters who suggest that this list should be illustrative, not exhaustive, because some actual relocation expenses might not fit neatly into

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[320] *See, e.g.*, BellSouth Comments at 13; DCR Comments at 4; Omnipoint Comments at 4-5.

[321] *Cost-Sharing Notice*, 11 FCC Rcd at 1940, ¶ 37.

[322] *See, e.g.*, East River Comments at 2.

[323] *See, e.g.*, AAR Comments at 8; API Comments at 5-6.

[324] CIPCO Comments at 1.

[325] AT&T Comments at 10-11

[326] *See, e.g.*, GTE Comments at 15; PacBell Comments at 3-4.

one of these categories.[327]

21. For administrative convenience and simplicity, we believe that the bulk of compensable costs should be tied as closely as possible to actual equipment costs, such as those listed in the previous paragraph. Based on this goal, we conclude that subsequent PCS licensees should only be required to reimburse PCS relocators for incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the "hard" costs involved. This restriction on the reimbursement of transaction fees corresponds to the restriction we adopted with respect to PCS reimbursement of incumbent transaction expenses during an involuntary relocation, as discussed in Section IV(3), *infra*. For purposes of cost-sharing, however, such transaction expenses would be reimbursable for relocations that occur during any time period -- voluntary, mandatory, or involuntary.

22. Additionally, several commenters stated that they have made lump-sum payments to microwave incumbents so that the incumbents may design and construct their own replacement systems.[328] PCS licensees request that such payments be reimbursable under our cost-sharing plan.[329] We agree with commenters that they should be entitled to some reimbursement for such payments; however, we conclude that only those costs attributable to the cost of purchasing a replacement system will be reimbursable. Therefore, the PCS relocator will be required to submit a cost allocation, which itemizes the approximate cost of replacement facilities based on the allowable compensable expenses listed above. If the entire lump sum either cannot be accounted for, or exceeds the reimbursement cap discussed in Section A(5), *infra*, the remaining amount will not be eligible for reimbursement.

23. We also tentatively concluded in the *Cost-Sharing Notice* that PCS licensees should be permitted to seek reimbursement for any relocation costs incurred after the voluntary negotiation period for A and B block licensees began on April 5, 1995, but prior to the adoption of a cost-sharing plan.[330] Commenters concurred with our tentative conclusion.[331] We agree with commenters that PCS licensees who have already relocated microwave links should receive the same reimbursement benefit as those PCS licensees who relocate microwave systems after adoption of the cost-sharing plan.[332] Therefore, once the new rules are effective and a clearinghouse is established, receipts or expenses for compensable microwave relocation costs incurred since April 5, 1995 should be submitted to the

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[327] *See, e.g.*, East River Comments at 2.

[328] *See, e.g.*, AT&T Comments at 9.

[329] *Id.*

[330] *Cost-Sharing Notice*, 11 FCC Rcd at 1939, ¶ 35.

[331] *See, e.g.*, GTE Comments at 15; PacBell Comments at 3-4.

[332] *See, e.g.*, GTE Comments at 15; PacBell Comments at 3-4.

clearinghouse for accounting purposes.

5. Reimbursement Cap

24. Background. In the *Cost-Sharing Notice,* we proposed a $250,000 cap on the reimbursement amount that a PCS licensee may obtain from subsequent licensees for the relocation of each individual microwave link.[333] We also proposed a supplemental reimbursement cap of $150,000 for situations in which a licensee is required to pay for a new tower to effectuate the relocation of the microwave incumbent.[334]

25. Comments. Many microwave incumbents oppose the imposition of a reimbursement cap. They argue that the cap would place an artificial ceiling on the price of relocating a link, force them to contribute to the cost of their own relocation, and reduce their ability to obtain comparable facilities.[335] Some incumbents also assert that a reimbursement cap may force microwave incumbents to bear some of the cost of relocation themselves.[336] AAR disputes whether relocation costs will average $250,000,[337] although CIPCO states that the proposed cap is reasonable and adequate.[338] By contrast, most PCS licensees approve of the caps.[339] Some PCS licensees suggest, however, that the cap should only be a cap on premium payments, assuming such payments are reimbursable under the cost-sharing plan.[340] They argue that, if reasonable relocation costs exceed the cap, then the cap should be flexible enough to allow reimbursement of such costs.[341] Other PCS licensees oppose flexible caps.[342] They contend that it is difficult to differentiate between actual costs and premiums, and that a

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[333] *Cost Sharing Notice,* 11 FCC Rcd at 1943, ¶¶ 42-43.

[334] *Id.*

[335] *See, e.g.*, AGA Comments at 4; APCO Comments at 7-9; NRECA Comments at 5.

[336] *See, e.g.*, AAR Comments at 5-6.

[337] AAR Comments at 7, citing a 1992 study by the Commission's Office of Engineering and Technology which concluded that some relocation costs could be as high as $814,000, depending on the number of links required to cover the distance of a 2 GHz link when the facility converts to a higher frequency.

[338] CIPCO Comments at 1.

[339] *See, e.g.*, DCR Comments at 4; GO Comments at 3; PCIA Comments at 29; US Airwaves Comments at 2.

[340] *See, e.g.*, Sprint Comments at 27; AT&T Comments at 5, n.11; PCS PrimeCo Comments at 8-9.

[341] *Id.*

[342] BellSouth Reply Comments at 13; GO Comments at 5.

cap will help to keep costs down.[343] Moreover, they argue that rigid caps are likely to reduce the number of disputes that arise over which costs are "actual" relocation costs.[344] Several commenters express concern that PCS licensees will average costs over numerous relocated links in order to receive the maximum reimbursement allowed per link, regardless of actual costs incurred.[345]

26. In addition, some commenters suggest that the $150,000 cap for new towers should also apply to tower modifications, because such modifications can be very costly and may require that a large portion of the proposed $250,000 cap be allocated to structural reinforcement, and so on.[346] They argue that failure to include tower modifications as part of the additional $150,000 cap may discourage modifications, even though modifications may be simpler, more economical, and may face fewer local zoning challenges than new construction.[347] BellSouth also requests us to specify that the $150,000 cap applies to the construction and modification of all towers related to the link, and that it is not a separate cap of $150,000 for each tower associated with a link.[348]

27. Discussion. We adopt a cap of $250,000 on the actual cost of relocating the link (represented by variable C in the cost-sharing formula), with an additional $150,000 if a new or modified tower is required. We believe that a reimbursement cap enables participants in future PCS auctions to assess the value of a license more accurately, because these applicants would be able to determine in advance the maximum amount they may be required to contribute towards relocation costs. In addition, we believe that such a cap protects future PCS licensees, who have no opportunity to participate in the negotiations, from being required to contribute to excessive relocation expenses. We agree with those commenters who argue that a rigid cap will reduce disputes over relocation expenses, because we believe that such a cap will prevent subsequent licensees from being forced to contribute to astronomical expenses that may include hidden premiums.[349] We also agree with those incumbents who suggest that raising the cap will result in a larger number of disputes.[350] As we stated in the *Cost-Sharing Notice*, we believe that a $250,000 cap plus $150,000 for towers is sufficient to

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[343] BellSouth Comments at 14.

[344] *Id.*

[345] *See, e.g.*, GO Comments at 5; AAR Comments at 10.

[346] *See, e.g.*, BellSouth Comments at 18-19; AT&T Comments at 4, n.8.

[347] *See, e.g.*, BellSouth Comments at 18-19.

[348] BellSouth Comments at 19, n. 29.

[349] *See, e.g.*, BellSouth Comments at 14.

[350] *Id.*

cover the average cost of relocating a link.[351] Furthermore, we emphasize that the cap does not limit payments to microwave incumbents, because it is a cap on the amount that subsequent licensees must pay to the PCS relocator, not a cap on the amount the PCS relocator may pay to the microwave incumbent to vacate the spectrum.[352] The cap does not relieve PCS licensees from the responsibility of providing incumbents with replacement systems, so adopting a cap should not force incumbents to pay for their own relocation expenses. We also emphasize that PCS licensees will not be permitted to average costs over numerous links; rather, they must submit verification and receipts for actual expenses incurred for each individual relocated link, as discussed in Appendix Section A(4), *supra*.[353]

28. Finally, we agree with BellSouth that the additional $150,000 cap permitted for new towers should also encompass costs associated with modifications to existing towers.[354] Thus, PCS licensees that modify an existing tower may claim them under the $150,000 tower cap. We believe that adding such flexibility will promote tower modifications, which may be simpler, more economical, and result in fewer local zoning challenges than new tower construction.[355] We also agree with BellSouth that the $150,000 cap should apply to the construction and modification of all towers related to the link, and that it is not a separate cap of $150,000 for each tower associated with a link.[356]

B. Triggering a Reimbursement Obligation

1. Licensed PCS

29. Background. In the *Cost-Sharing Notice*, we proposed that later-entrant PCS licensees would be obligated to contribute to the cost of relocation if their PCS link would have caused interference to a microwave link previously relocated by another PCS licensee. To determine whether interference would have occurred to a link that no longer exists, we proposed to use the criteria set forth in the TIA Telecommunications Systems Bulletin 10-F,

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[351] *Cost-Sharing Notice*, 11 FCC Rcd at 1943, ¶ 43 (citing the study conducted by the FCC Office of Engineering and Technology); *see also* CIPCO Comments at 1 (stating that, in its experience as the operator of a 2 GHz microwave system, the proposed cap is reasonable and adequate).

[352] *See, e.g.*, AT&T Reply Comments at 7; Chester Telephone *et al.* Reply Comments at 4; GO Reply Comments at 4-5.

[353] *See, e.g.*, GO Comments at 5; AAR Comments at 10.

[354] BellSouth Comments at 18-19.

[355] *See, e.g.*, BellSouth Comments at 18-19.

[356] BellSouth Comments at 19 n. 29.

"Interference Criteria for Microwave Systems," May 1994 ("Bulletin 10-F"),[357] or some other industry-accepted standard. However, we stated that, because the procedures set forth in Bulletin 10-F permit the use of different propagation models and allow alternative technical parameters to be employed, Bulletin 10-F may not provide a clear standard for determining interference in some situations[358] Thus, we asked for comment on whether Bulletin 10-F should be limited in scope for reimbursement purposes.[359] We also asked for comment on whether another standard could be more easily applied for determining interference for reimbursement purposes.[360]

30. Comments. A number of commenters support the use of Bulletin 10-F for determining interference which then triggers a cost-sharing obligation.[361] However, some commenters allege that Bulletin 10-F does not address propagation loss due to irregular terrain, and thus is an inaccurate measure of interference.[362] SBMS states that Bulletin 10-F does not address adjacent channel interference or differences in terrain, but it supports the use of Bulletin 10-F for lack of a better standard.[363] BellSouth and PCIA argue that the Commission should adopt the Longley-Rice Irregular Terrain Model to determine propagation loss.[364]

31. On the other hand, a number of A and B block PCS licensees who have entered into their own private cost-sharing agreement suggest that we use an alternative method for determining interference, which they call the "Proximity Threshold" test.[365] Supporters of the Proximity Threshold test, which is described in more detail below, argue that it provides a bright-line test to determine when the cost-sharing reimbursement is triggered, which

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[357] TIA is currently working with industry representatives to modify the parameters of Bulletin 10-F. These new parameters and requirements may better represent PCS-to-microwave interference standards and could be utilized in applying the cost-sharing mechanism.

[358] *Cost-Sharing Notice*, 11 FCC Rcd at 1947, ¶ 52.

[359] *Id.*

[360] *Id.*

[361] *See, e.g.*, BellSouth Comments at 16-18, PCIA Comments at 30-35; PacBell Comments at 5; UTC Comments at 11.

[362] *See, e.g.*, BellSouth Comments at 17; PCIA Comments at 35.

[363] SBMS Comments at 6.

[364] BellSouth Comments at 17; PCIA Comments at 35.

[365] *See, e.g.* GTE Comments at 4-5; PCS PrimeCo Comments at 12-13; Sprint Comments at 24.

simplifies the process of determining when an obligation to share costs arises.[366] In reply comments, many commenters express support for the use of the Proximity Threshold test as a method for determining cost-sharing obligations.[367] Several of the supporters stress that if adopted, we should clarify that the Proximity Threshold test would not be used to determine actual PCS-to-microwave interference, but rather would only be used to determine when a PCS licensee has an obligation to participate in the cost-sharing plan.[368] A few commenters oppose the Proximity Threshold test.[369] SBMS opposes the Proximity Threshold test because it is contrary to standard engineering practice for determining actual interference, and it monetarily disadvantages PCS providers whose innovative system technologies are designed to work around microwave incumbents.[370] GO also opposes the Proximity Threshold standard as being too broad in imposing reimbursement obligations, because it is based solely on geographic location.[371] GO and Omnipoint both claim that licensees should not have to pay for unnecessary relocations when interference could be avoided.[372] Tenneco opposes the Proximity Threshold test because it believes such a test will change the actual interference protection afforded microwave incumbents.[373]

32. Discussion. We agree with the majority of commenters that the Proximity Threshold test is an acceptable alternative to Bulletin 10-F to determine interference for purposes of our cost-sharing plan, and we adopt its use. Under the Proximity Threshold test, cost sharing obligations are triggered if, for any microwave link, (1) all or part of the microwave link was initially co-channel with the PCS band(s) of any subsequent PCS entity; (2) a PCS relocator has paid the relocation costs of the microwave incumbent; and (3) the subsequent PCS entity is preparing to turn on a fixed base station at commercial power and the fixed base station is located within a rectangle described as follows:

> The length of the rectangle shall be x where x is a line extending through both nodes of the microwave link to a distance of 48 kilometers (30 miles) beyond each node. The width of the rectangle shall be y where y is a line perpendicular to x and extending for a distance of 24 kilometers (15 miles) on both sides of x. Thus, the

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[366] *See, e.g.* GTE Comments at 4-5; PCS PrimeCo Comments at 12-13; Sprint Comments at 24.

[367] *See, e.g.*, BellSouth Reply Comments at 2-3; PacBell Reply Comments at 2-3; Sprint Comments at 24-25; Chester Telephone Co. Reply Comments at 2; Comsearch Reply Comments at 2.

[368] *Id.*

[369] *See, e.g.*, GO Reply Comments at 7; SBMS Reply Comments at 6; Tenneco Reply Comments at 4-5.

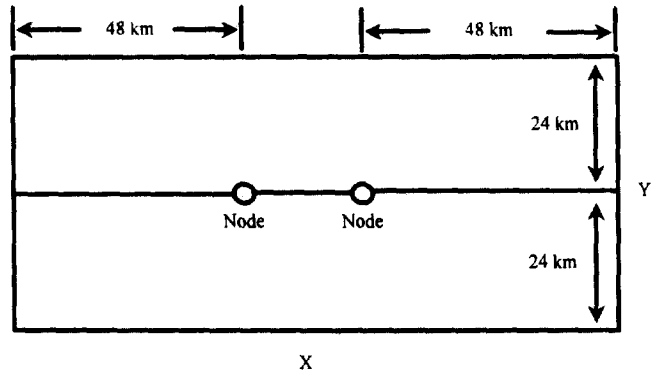
[370] SBMS Reply Comments at 6.

[371] GO Reply Comments at 7.

[372] *Id.*; *see also* Omnipoint Reply Comments at 5-7.

[373] Tenneco Reply Comments at 4-5.

rectangle would be represented as follows:



33. We agree with those commenters that argue that this test will be less expensive and easier to administer than Bulletin 10-F.[374] The Proximity Threshold test does not require extensive engineering studies or analyses, and it yields consistent, predictable results by eliminating the variations which can be associated with the use of Bulletin 10-F. A PCS base station will either fall inside the reimbursement "box" or out of it. Additionally, use of the Proximity Threshold test will permit existing and prospective PCS providers to project their cost sharing obligations more accurately. We are cognizant of concerns raised by a few commenters that use of the Proximity Threshold test may limit a licensee's ability to engineer around the transmission of the former microwave link to avoid relocation reimbursement obligations.[375] However, we believe that the benefits that the Proximity Threshold provides in terms of ease of administration outweigh any harm that use of the test will impose on later-entrant PCS licensees. We also believe that many fewer disputes will arise over application of the Proximity Threshold than if we mandated use of Bulletin 10-F for cost-sharing purposes.

34. As noted above, we also conclude that only co-channel interference will be considered for purposes of determining a cost-sharing obligation, which is what we proposed in the *Cost-Sharing Notice*.[376] We exclude adjacent-channel interference as a trigger for cost-sharing, because we agree with those commenters who argue that excluding adjacent-channel interference for cost-sharing purposes greatly simplifies our cost-sharing plan and eliminates many possible disagreements over whether a PCS system would have caused or experienced

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[374] *See, e.g.*, BellSouth Reply Comments at 2-3; PacBell Reply Comments at 2-3; Sprint Comments at 24-25.

[375] *See, e.g.*, GO Reply Comments at 7; SBMS Reply Comments at 6.

[376] *Cost-Sharing Notice*, 11 FCC Rcd at 1948-1949, ¶¶ 54-56.

adjacent channel interference.[377] We emphasize, however, that the exclusion of adjacent-channel interference for cost-sharing purposes will not affect the way that PCS-to-microwave interference is determined, as some incumbents fear.[378] Rather, microwave incumbents remain protected from both adjacent and co-channel interference under Section 24.237 of our rules.[379]

2. Unlicensed PCS

35. Comments. UTAM points out that the trigger for cost-sharing obligations should be different for unlicensed PCS services, because their services and procedures are different than licensed PCS services.[380] UTAM suggests that, for unlicensed PCS services, reimbursement obligations should be linked to its deployment plan for unlicensed PCS devices. UTAM designates individual areas, usually counties, as Zone 1 or Zone 2 areas, depending on the number of microwave links yet to be relocated.[381] In Zone 1 areas, early unlicensed PCS deployment is allowed, because few microwave incumbent systems still operate.[382] As the aggregate power level is approached in which interference would be caused to incumbent microwave licensees, UTAM restricts further unlicensed PCS device deployment until the affected microwave link is relocated.[383] In Zone 2 areas, it is necessary to coordinate the site of each unlicensed PCS systems to a relatively large number of still-operating microwave links.[384] UTAM proposes that its reimbursement obligation should be triggered when a county is cleared of microwave links in the unlicensed allocation, and UTAM invokes a Zone 1 power cap as a result of third party relocation activities; or a county is cleared of microwave links in the unlicensed allocation and UTAM reclassifies a Zone 2 county to a Zone 1 status, which could not have been done without third party relocation activities.[385] Those commenters that discuss UTAM's cost-sharing obligations agree with its proposal.[386]

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[377] *See, e.g.*, Omnipoint Comments at 4.

[378] *See, e.g.*,Tenneco Reply Comments at 4-5.

[379] 47 C.F.R. § 24.237.

[380] UTAM Comments at 30.

[381] *ET Fourth Memorandum Opinion and Order*, 10 FCC Rcd at 7958-59, ¶¶ 12-13.

[382] *Id.*

[383] *Id.*

[384] *Id.*

[385] *Id.*

[386] *See, e.g.*, PCIA Reply Comments at 17; PacBell Reply Comments at 7-8.

36. Discussion. We agree with UTAM that the trigger for cost-sharing obligations should be different for unlicensed PCS, because their services and procedures are different than licensed PCS services.[387] We therefore adopt UTAM's suggestion that, for unlicensed PCS, reimbursement obligations should be linked to its deployment plan for unlicensed PCS devices. UTAM's reimbursement responsibilities will be triggered when (1) a county is cleared of microwave links in the unlicensed allocation, and UTAM invokes a Zone 1 power cap as a result of third party relocation activities, or (2) a county is cleared of microwave links in the unlicensed allocation and UTAM reclassifies a Zone 2 county to Zone 1 status, which could not have been done without third party relocation activities.[388]

C. Payment Issues

1. Timing

37. Background. We proposed in the *Cost-Sharing Notice* that a PCS licensee entering a previously-cleared band would be responsible for reimbursement payment under the cost-sharing proposal at the time the PCS licensee initiates service and such service would have interfered with the microwave link that has been relocated.[389] Alternatively, we requested comment on whether fulfillment of the cost-sharing obligation should be treated as part of the frequency coordination process, and that licensees should not be permitted to initiate service until their payments are made in full.[390]

38. Comments. PCS licensees generally agree that cost-sharing obligations should attach when the PCS licensee offers service that would have interfered with the relocated microwave link.[391] DCR requests that we clarify that the cost-sharing obligation begins when commercial service is offered, not during the twelve-month trial period.[392] Western opposes this proposal and advocates a payment date of at least 10 days after the clearinghouse notifies the PCS licensees that a payment obligation exists.[393] UTAM suggests that the trigger mechanism for unlicensed PCS providers should occur when (1) UTAM imposes a Zone 1

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[387] UTAM Comments at 30.

[388] *Id.*

[389] *Cost-Sharing Notice*, 11 FCC Rcd at 1950, ¶¶ 57-58.

[390] *Id.*

[391] DCR, GTE, Omnipoint, PacBell, and PCIA all agree that a cost-sharing obligation should commence only when the subsequent PCS operator begins a commercial operational system that would have caused interference to the microwave link, had the link not previously been relocated.

[392] DCR Comments at 7-8.

[393] Western Comments at 9.

power cap as a result of third party relocation activities, or (2) a county is cleared of microwave links in the unlicensed allocation and UTAM reclassifies a Zone 2 county to Zone 1 status.[394]

39. Discussion. We agree with the majority of commenters that payment should be due when a subsequent licensee commences commercial operation, but we modify our proposal slightly for administrative convenience. Thus, on the day that a PCS licensee files its PCN,[395] it must file a copy of the PCN with the clearinghouse. Once the clearinghouse receives the PCN, it will determine if any reimbursement obligation exists. The clearinghouse will then notify the PCS licensee in writing of its repayment obligation, if any. Once the PCS licensee receives a written copy of such obligation, it must pay directly to the PCS relocator the amount owed within thirty days, with the exception of those businesses that qualify for installment payments, as discussed in Appendix Section C(2), *infra*. A business that qualifies for an installment payment plan must make its first installment payment within thirty days of notice from the clearinghouse. This procedure will thus require PCS licensees to satisfy their repayment obligations at approximately the same time that service is commenced, without requiring the clearinghouse to actually ascertain or confirm that service has begun. We also concur with UTAM that procedures for unlicensed PCS need to be different. We therefore adopt UTAM's suggestion that its first payment will be due thirty days after (1) UTAM imposes a Zone 1 power cap as a result of third party relocation activities, or (2) a county is cleared of microwave links in the unlicensed allocation and UTAM reclassifies a Zone 2 county to Zone 1 status.[396]

2. Eligibility for Installment Payments.

40. Background. Under our proposal, PCS licensees that are entitled to make installment payments under our auction rules would also be allowed to pay their share of relocation costs in installments.[397] Under our auction rules for the PCS C block, three different installment payment plans are currently available to C Block licensees. The first installment payment plan is available to applicants with gross revenues in excess of $75 million but less than $125 million.[398] This plan provides for the payment of interest based on the ten-year U.S. Treasury rate, plus 3.5 percent with payment of principal and interest amortized over the term of the license. The second installment plan is available to those

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[394] UTAM Comments at 11.

[395] 47 C.F.R. § 24.237; *see also* 47 C.F.R. § 21.100(d).

[396] UTAM Comments at 11.

[397] *Cost-Sharing Notice*, 11 FCC Rcd at 1951, ¶ 61.

[398] 47 C.F.R. § 24.711(b)(1).

applicants with gross revenues between $40 and $75 million.[399] This plan provides for the payment of interest equal to the ten-year Treasury rate plus 2.5 percent. The applicants eligible for this plan may pay interest only for one year, with the principal and interest amortized over the remaining nine years of the license term. The third installment plan is available to small businesses with gross revenues under $40 million.[400] Under the third plan, small businesses are permitted to pay for their licenses in installments at the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted. Small businesses may make interest-only payments for the fist six years, with payments of principal and interest amortized over the remaining four years of the license term. We also proposed that UTAM be allowed to utilize installment payments, because UTAM will be funding relocation costs with fees that will be collected over time.[401]

41. Comments. Most PCS licensees that commented on this proposal supported the adoption of installment payments for any cost-sharing obligation incurred by entities eligible for installment payments under our rules.[402] The one exception came from Iowa L.P., a potential bidder in a future PCS auction, who suggests that small businesses be exempt from all microwave relocation requirements and all potential cost-sharing obligations, due to small businesses' limited financial resources.[403] Many commenters also approve of some type of special provision for UTAM, but several argue that UTAM should not receive preferential interest rates. BellSouth argues that UTAM should have a separate payment plan that requires quarterly payments over a period of five years at an interest rate equivalent to prime plus three percent.[404] PacBell argues that UTAM should be permitted to make installment payments under the cost-sharing plan, but that UTAM financing should be done at its underlying cost of funds.[405] PCIA suggests that UTAM payments be spread out over a five year period, with payments due on a quarterly basis and interest applied to UTAM's share of the relocation costs.[406] Western argues that UTAM should not be entitled to pay its cost-sharing obligations under an installment plan that was tailored to C and F block license

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[399] 47 C.F.R. § 24.711(b)(2).

[400] 47 C.F.R. § 24.711(b)(3).

[401] *Id.*

[402] BellSouth Comments at 19; Carolina PCS I Comments at 1; DCR Comments at 9; GO Comments at 5; Iowa L.P. Comments at 6-7; PacBell Comments at 5; PCIA Comments at 17-18; Sprint Comments at 30; US Airwaves Comments at 7-8; Omnipoint Reply Comments at 5; SRI Reply Comments at 3; and WTCA Reply Comments at 1.

[403] Iowa L.P. Comments at 5-7.

[404] BellSouth Comments at 19

[405] PacBell Comments at 5.

[406] *Id.*

holders because it has not been accorded special treatment by Congress.[407] Western argues that if the Commission does allow UTAM the benefit of an installment plan, any such plan should have a much shorter time frame than ten years, and be at an interest rate based on commercial money markets.[408]

42. In its reply comments, UTAM points out that its revenues are completely dependent on the sales of unlicensed PCS products, and thus its ability to pay relocation agreements is dictated by the timing and success of its members' equipment sales.[409] UTAM proposes two different payment plans: under the Commission's proposal, UTAM could pay interest only for the first six years of its cost-sharing obligation, and principal and interest amortized over the next four years.[410] Alternatively, if upon incurring a cost sharing obligation, UTAM does not believe it has sufficient funds to meet this schedule, it could have the option of choosing to dedicate the clearing fees raised from the additional product deployment enabled by the third party's relocation activities to pay its cost-sharing obligation.[411] Additionally, UTAM suggests that its trigger mechanism for cost-sharing obligations should be modified, as discussed in Appendix Section (B)(2), *supra*. API asks that we clarify that UTAM must pay microwave incumbents immediately for all relocation costs, or as stipulated in its agreement with the incumbent, and that only the cost-sharing reimbursement be remitted on an installment basis.[412]

43. Discussion. We conclude that PCS licensees that are allowed to pay for their licenses in installments under our designated entity rules should have the same option available to them with respect to payments under the cost-sharing formula, because allowing such payments will significantly ease the burden of cost-sharing for these entities. The specific terms of the installment payment mechanism, including the treatment of principal and interest, would be the same as those applicable to the licensee's auction payments described above. Thus, if a licensee is entitled to pay its winning bid in quarterly installments over ten years, with interest-only payments for the first year, it would pay relocation costs under the same formula. We also specify that if an entity is allowed installment payments but such payments extend beyond the life of the clearinghouse, the entity must continue to make such payments directly to the PCS licensee that holds the reimbursement rights pursuant to the cost-sharing plan specified by the clearinghouse. If, for any reason, the entity eligible for installment payments is no longer eligible for such installment payments on its license, that

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[407] Western Comments at 6.

[408] *Id.*

[409] UTAM Reply Comments at 8.

[410] *Id.* at 9-10.

[411] *Id.* at 10.

[412] API Comments at 11.

entity is no longer eligible for installment payments under the cost-sharing plan.[413]

44. UTAM, a not-for-profit corporation, exists only to assist with relocation and spectrum management issues of the 1910-1930 MHz band.[414] Most of its revenues will be received through clearing fees collected from manufacturers for each unlicensed PCS transmitter.[415] Because UTAM exists only to assist with spectrum management and receives its funding in small increments over an extended period of time, we conclude that it should also be allowed to pay for its cost-sharing obligations in installments over a period of time. Based on the comments received, we therefore adopt the proposal suggested by several commenters that UTAM be allowed to make quarterly payments over a five-year period with an interest rate of prime plus 2.5 percent.[416] We note that such rate is consistent with other Commission regulations, in which we have used the rate for U.S. Treasury Obligations.[417] Our general installment payment rules are also based on U.S. Treasury Notes.[418] Assuming that the prime rate is what UTAM would be able to obtain if private financing is sought, this rate will benefit UTAM, which will avoid the higher interest rates and other transactional costs associated with using private sources to finance their repayment obligation. We note that UTAM may negotiate separate arrangements with other parties.

4. Termination of Cost-Sharing Obligations

45. Background. In the *Cost-Sharing Notice*, we proposed that the cost-sharing plan should sunset for all PCS licensees ten years after the date that voluntary negotiations commenced for A and B block licensees, which means that cost-sharing would cease on April 4, 2005.[419] We stated that we believe that it is important to set a date certain on which the clearinghouse will be dissolved.[420]

46. Comments. Most commenters agree that the cost-sharing proposal should sunset on April 4, 2005, ten years after the start date of the A and B block voluntary negotiation

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[413] *See also* 47 C.F.R. 24.709(d), 24.711(c).

[414] *See ET Fourth Memorandum Opinion and Order*, 10 FCC Rcd at 7957, ¶ 9.

[415] *Id.*

[416] *See, e.g.*, BellSouth Comments at 19.

[417] *See, e.g.*, In the Matter of American Personal Communications, Cox Cable Communications, Inc., and Omnipoint Communications, Inc. For Initial Authorizations in the Broadband Personal Communications Service, *Order*, FCC 96-94, 61 Fed. Reg. 14,672 (Apr. 3, 1996), ¶¶ 9-10.

[418] *See* 47 C.F.R. § 24.711(b)(3).

[419] *Cost-Sharing Notice*, 11 FCC Rcd at 1941, ¶ 39.

[420] *Id.*